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**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

May 28, 1947

**ATTORNEY GENERAL**

Hon. L. A. Woods  
State Superintendent  
State Department of Education  
Austin, Texas

**Southwestern Broadcasting Co. v.  
Oil Center Broadcasting Co.  
210 SW 2d 230**

Attention: Hon. T. M. Trimble

Dear Sir:

Opinion No. V-217

Re: Legality of contract between Board of Trustees of an independent school district and a radio station to give the latter exclusive broadcasting rights for football games.

Your letter requesting an opinion from this Department is as follows:

"At the request of Mr. Murry H. Fly, Superintendent of Schools of Odessa, Texas, I am submitting the problems contained in the attached letter for your consideration and opinion."

We quote the letter from Hon. Murry H. Fly which is attached to your request:

"Last November the Board of Trustees of Ector County Independent School District gave a contract to KRIG, a broadcasting station here, to broadcast football games for the season 1947-48. The contract was exclusive. KOSA and KECK, two other broadcasting stations, are contending that the Board could not give an exclusive contract and they are contending,

that is, KOSA is, that the local school board cannot prevent their broadcasting. The Board has asked me to write you for an opinion, and presently an opinion from the Attorney General on the matter if you do not already have a ruling from him regarding a case similar to ours.

"Question #1. Has the Board a legal right or was it in its legal rights to grant an exclusive contract to a radio station to broadcast football games for a period of two years?

"Question #2. Does the fact that there was no money consideration; that is, the contract was awarded to KRIG gratis, enter into the question?

"Question #3. Does the fact that the other two stations were not in existence at the time the contract was awarded enter into the question?"

School trustees are vested under our laws with broad powers in the control and management of schools. They are charged with the promotion of the education within their respective districts and in the absence of statutory limitation, they are vested with large discretion in the exercise of their powers of administration. State Line School District v. Farwell School District, 48 S.W. 616.

In the case of Royse Independent School District v. Reinhardt, 159 S.W. 1010, Reinhardt and others were attempting to restrain the members of the Royse Booster Club and the Trustees of the Royse Independent School District from performing contract between said Trustees and members of the Club by the terms of which the Trustees granted to the Club the privilege of using the south end of the public school campus as a ball ground during the period intervening between the close of the school in the Spring and the commencement of the school in the Fall. It was held in this case that the Board of Trustees is given exclusive power of management, regulation and control of the schools and school property within the district and had the power to grant to the Royse Booster Club the right to use the school's baseball field so long as said use did not interfere with the school's activities or injure the school property. See also: Beard v. Board of Education, 16 P. (2d) 900, and Young v. Board of Trustees, 4 P. (2d) 725.

It is recognized generally that athletic contests, inter-scholastic league meetings and other extra-curricular activities have become a necessary and integral part of our educational system. Plans for modern schools, including the most complete gymnasiums and football stadiums, have been designed with the view of providing proper facilities for the furtherance of this program. *Brooks v. Elder*, 189 N.W. 284; *Merriman v. School District No. 15, et al*, 86 A.L.R. 1181. Modern football stadiums are now equipped with necessary and adequate radio and press facilities. The Board of Trustees being vested with the control and management of such property and having large discretion in the exercise of their power of administration of school activities, have the right by bid or otherwise to permit or refuse to permit any person to use such facilities so long as its action does not constitute a clear abuse of discretion in the exercise of its powers of administration. In order that the Board's action may not be arbitrary but for the best interest of the schools, such a contract should be let upon bids for a valuable consideration. If only one station exists or only one bids, the contract would be valid provided some benefit was provided thereby to the schools.

So far as this Department has been able to determine, this is the first time a question has been raised concerning the Board of Trustees' authority to contract with a radio station to broadcast football games of the high schools within their district. We have been unable to find any statutory limitation with reference to such contracts. Therefore, it is the opinion of this Department that the Board of Trustees of Ector County Independent School District has the authority to grant an exclusive contract to a radio station to broadcast regularly scheduled football games.

In answer to your second question, we would like to point out that it is a fundamental rule that every contract must be supported by a consideration, and a contract without any consideration is not binding upon the parties and is unenforceable. See: 10 Tex. Jur. 112 and cases cited therein. It is, therefore, our opinion that in the absence of consideration the contract is not binding upon the Board of Trustees of Ector County Independent School District. This is not to be construed as meaning the Board of Trustees does not have the power to grant an exclusive permit to the radio station, but simply that the Board of Trustees now has the power to grant the privileges to the other radio stations in the absence of consideration if it so desires. If a valuable consideration, whether cash, advertising, or any substantial benefit to the school, was given for the present contract, then it is

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binding even though other stations have since come into existence and now want the same privilege.

SUMMARY

The Board of Trustees of Ector County Independent School District has the authority to grant an exclusive contract to a radio station to broadcast regularly scheduled football games.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By   
John Reeves  
Assistant

JR:djm

APPROVED:

  
ATTORNEY GENERAL